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97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-684

GRANTING FEDERAL RECOGNITION TO THE TEXAS BAND OF KICKAPOO INDIANS; CLARIFYING THE STATUS OF THE MEMBERS OF THE BAND; PROVIDING TRUST LANDS TO THE BAND, AND FOR OTHER PURPOSES

DECEMBER 15 (legislative day, NOVEMBER 30), 1982.—Ordered to be printed

Mr. COHEN, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany H.R. 4496]

The Select Committee on Indian Affairs, to which was referred the bill (H.R. 4496) to grant Federal recognition to the Texas Band of Kickapoo Indians; to clarify the status of the members of the band; to provide trust lands to the band, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

The amendment in the nature of a substitute is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Texas Band of Kickapoo Act".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) Congress finds that the Texas Band of Kickapoo Indians is a subgroup of the Kickapoo Tribe of Oklahoma; that many years ago, the Band was forced to migrate from its ancestral lands to what is now the State of Texas and the nation of Mexico; that, although many members of the Band meet the requirements for United States citizenship, some of them cannot prove that they are United States citizens; that, although the Band resides in the State of Texas, it owns no land there; that, because the Band owns no land in Texas, members of the Band are considered ineligible for services which the United States provides to other Indians who are members of federally recognized tribes because of their status as Indians except when the members of the Band are on or near the reservation of the Kickapoo Tribe of Oklahoma; that members of the Band live under conditions that pose serious threats to their health; and that, because their culture is derived from three different cultures, they have unique needs including, especially, educational needs.

(b) Congress therefore declares that the Band should be recognized by the United States; that the right of the members of the Band to pass and repass the borders of the United States should be clarified; that services which the

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United States provides to Indians because of their status as Indians should be provided to members of the Band in Maverick County, Texas; and, that land in the State of Texas should be taken in trust by the United States for the benefit of the Band.

DEFINITIONS

SEC. 3. For purposes of this Act.—

(a) "Band" means the Texas Band of Kickapoo Indians, a subgroup of the Kickapoo Tribe of Oklahoma;

(b) "Tribe" means the Kickapoo Tribe of Oklahoma;

(c) "Secretary" means the Secretary of the Interior.

ESTABLISHMENT OF BAND ROLL; CLARIFICATION OF UNITED STATES CITIZENSHIP

SEC. 4. (a) Within one year of the enactment of this Act, the Secretary shall, after consultation with the Tribe, compile a roll of those members of the Tribe who possess Kickapoo blood and who are also members of the Band. When said roll is complete, the Secretary shall immediately publish notice in the Federal Register stating that the roll has been completed. The Secretary shall ensure that the roll, once completed, is maintained and that it is current.

(b) If the Secretary does not compile the roll within the period prescribed in subsection 4(a), he shall submit a report to Congress setting forth the reasons he did not not do so.

(c) For a period of five years after the publication of the Federal Register notice required under subsection 4(a), any member of the Band whose name appears on the roll compiled by the Secretary, may, at his option, apply for United States citizenship. Such application shall be made to the Immigration and Naturalization Service and, upon receipt of the application, citizenship shall promptly be granted to the applicant.

(d) Notwithstanding the Immigration and Nationality Act, all members of the Band shall be entitled to freely pass and repass the borders of the United States and to live and work in the United States.

LAND ACQUISITION; APPLICABILITY OF THE INDIAN REORGANIZATION ACT

SEC. 5. (a) The Act of June 18, 1934 (48 Stat. 984) is hereby made applicable to the Band. *Provided, however,* That the Secretary is only authorized to exercise his authority under section 5 of that Act (25 U.S.C. 465) with respect to lands located in Maverick County, Texas.

(b) The Secretary is authorized and directed to accept no more than 100 acres of land in Maverick County, Texas, which shall be offered for the benefit of the Band with the approval of the Tribe. Nothing in this subsection shall be construed as limiting the authority of the Secretary under section 5 of the Act of June 18, 1934 (48 Stat. 985).

JURISDICTION

SEC. 6. The State of Texas shall exercise jurisdiction over civil causes of action and criminal offenses arising on the Band's trust lands in accordance with section 1360 of title 28, United States Code, and section 1162 of title 18, United States Code, as if it had assumed jurisdiction pursuant to sections 401 and 402 of the Act of April 11, 1968 (82 Stat. 78, 79). The provisions of section 403 of the Act of April 11, 1968 (82 Stat. 79) shall be applicable and available to the State of Texas.

PROVISION OF FEDERAL INDIAN SERVICES

SEC. 7. (a) Notwithstanding any other provision of law authorizing the provision of special programs and services by the United States to Indians because of their status as Indians, the Band and its members in Maverick County, Texas shall be eligible for such programs and services without regard to the existence of a reservation, the residence of members of the Band on or near a reservation, or the compilation of the roll pursuant to subsection 4(a) of this Act.

(b) In providing services pursuant to subsection (a), the Secretary and the head of each department and agency shall consult and cooperate with appropriate officials or agencies of the Mexican Government to the greatest extent possible to ensure that such services meet the special tricultural needs of the Band and its members. Such consultation and cooperation may include, whenever practicable, joint funding agreements between such agency or department of the United States and the appropriate agencies and officials of the Mexican Government.

TEXAS BAND OF KICKAPOO INDIANS

Background

The Texas Band of Kickapoo Indians is composed of descendants of the Algonquian speaking Kickapoo tribe whose aboriginal homeland was the Great Lakes region of the United States. Through a series of treaties which the tribe entered into with the United States in the early 19th century, the Kickapoo relinquished their rights to their aboriginal lands in exchange for land in Missouri and some compensation.

The prospect of relocating from their ancestral lands created factionalism within the Kickapoo tribe. One group of tribal members relocated to the land in Missouri, but found it unacceptable and negotiated a separate treaty with the United States. This 1832 treaty provided the group with land near Fort Leavenworth, Kansas. A second group refused to negotiate with the United States and relocated near the Sabine River in the Texas Territory.

As a result of hostilities which developed in the Texas Territory, the Kickapoo Band moved south into Mexico. In 1850 the group signed an agreement with the Mexican government in which they agreed to aid Mexico in defending its border in return for a tract of land. This land was eventually exchanged for another parcel in Nacimiento, Mexico in 1852.

In 1862 approximately 600 members of the Kansas Kickapoo joined the band in Mexico. Over the course of the next two decades several hundred tribal members returned to the United States and in 1883 a Kickapoo reservation was established in Oklahoma. However, in 1891 the federal government allotted each Kickapoo member 80 acres of reservation land and opened the remaining acreage up for non-Indian settlement. The Kickapoo in Mexico were included in the grants of allotments.

The sale and allotment of reservation land caused many of the Oklahoma Kickapoo to migrate south and join the band in Mexico. In the early 20th century the United States lifted restrictions which had been imposed on the sale of land by non-U.S. citizens. Members of the Mexican band were thereby permitted to sell their allotments and as a result lost approximately 90% of their land in Oklahoma through questionable land sales.

Throughout the early part of the 20th century, the Mexican Kickapoo resided year-round in Nacimiento. The Kickapoo groups maintained close relations through inter-marriage and frequent visitation between Oklahoma, Kansas, and Nacimiento.

Severe drought conditions in Mexico in the 1940s induced the band to begin an annual migration to the United States in order to work as migrant farmers. The band settled on land in Eagle Pass, Texas and used it as a base camp from which tribal members would follow the harvests.

When the Oklahoma Kickapoos ratified a constitution pursuant to the Indian Reorganization Act of 1934 (48 Stat. 984), the Texas Kickapoos were invited to join the roll, and by the 1970s a majority did so. Today, approximately 80% of the Texas band are enrolled members of the Oklahoma Kickapoo tribe.

At the present time, the Texas Band of Kickapoo reside in Nacimiento, Mexico during the winter months of November through March. When spring arrives the group moves back to Eagle Pass, Texas, where they reside for the greater part of the year. Approximately 10 percent of the group remains in Nacimiento year-round. The members of the band who move to Texas work as migrant farmers and follow the harvests into northern states including Montana, Utah and other states.

The band's migratory lifestyle has resulted in a lack of clarity concerning their citizenship. Many of the Texas Kickapoo are entitled to United States citizenship, either by birth or because one or more of their parents are citizens. However, due to a lack of written records, the group is unable to document the places of birth of many of its members.

In the 1950s the Texas Kickapoo were granted parole status by the United States Immigration and Naturalization Service pursuant to the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)). Members of the band carry cards which state "PAROLLE-Kickapoo Indian pending clarification of status by Congress." Their parole status permits band members to cross the United States-Mexico border, however, it must be renewed yearly and does not afford the group with a permanent right of crossing.

Today the approximately 600 members of the Texas Band of Kickapoo reside on an undeveloped city park near the International Bridge in Eagle Pass, Texas. The city provided the band with the park land after their village under the International Bridge burned in 1980. The city also provides the band with a water spigot, an outdoor toilet facility and garbage service. Between 20 and 30 band members live on the land year-round, while the remainder spend the winter months on their land in Nacimiento, Mexico, about 100 miles away.

The band maintains a traditional lifestyle and most members speak only their native Algonquian dialect. Housing consists of traditional cane huts and nearby tribal burial grounds hold spiritual significance for the band members.

A lack of adequate sanitary facilities and ventilation in their housing has resulted in severe health problems for band members. A 1978 report by the Texas Department of Health cites the conditions in which the band lives as contributing to a prevalence of tuberculosis, diabetes, hypertension and cardiovascular disease among the Texas Kickapoo. Many of the infants suffer from malnutrition and dehydration.

Members of the band are eligible for federal health and other services as a result of their enrollment in the Oklahoma Kickapoo Tribe. However, the requirement that band members travel to Oklahoma in order to receive these services diminishes the extent to which the Texas Kickapoo can take advantage of their eligibility. At present, the band members receive some medical and public assistance from state and local agencies while staying at Eagle Pass. They also receive Food Stamp benefits, Aid to Dependent Children, Old Age and other supplemental income programs of the Social Security Administration.

The Kickapoo have aroused local interest in their plight and area residents and community groups have been raising money in order to

purchase a tract of land for the band. Legal title to their homeland would eliminate the threat of eviction under which the band currently lives and make the possibility of locally based federal and state services more likely. The Oklahoma Kickapoo Tribe has also taken a strong interest in obtaining a permanent land base and right of passage for their traditional subgroup.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1. Provides that the Act may be cited as the "Texas Band of Kickapoo Act".

Section 2. Congressional findings and declaration of policy

Section 2(a) contains several findings by Congress concerning the Texas Band of Kickapoo Indians. Important among these findings are that many of the members of the Band meet the requirements for United States citizenship but lack the documentation to prove that they are United States citizens; that Band members do not receive Indian services from the United States except when they are in Oklahoma, because they are not on or near a reservation when in Texas; that the culture of the Band and its members it derived from the culture of the aboriginal Kickapoo Tribe, the United States, and Mexico, and that, as a result, the members of the Band have unique needs including, especially, educational needs.

Section 2(b) contains several declarations of policy by the Congress of the United States. Congress declares that the right of the members of the Band to pass and repass the borders of the United States should be clarified and that the United States provide Indian services to the members of the Band when they are residing in Maverick County, Texas. Finally, Congress declares that the land in the State of Texas should be taken in trust by the United States for the benefit of the Band.

Section 3. Definitions

Section 3(a) defines the term "Band" to mean the Texas Band of Kickapoo Indians which is a subgroup of the Kickapoo Tribe of Oklahoma.

Section 3(b) defines the term "Tribe to mean the Kickapoo Tribe of Oklahoma.

Section 3(c) defines the term "Secretary" to mean the Secretary of the Interior.

Section 4. Establishment of Band roll; clarification of United States Citizenship

Section 4(a) provides that, within one year of the enactment of this Act, the Secretary of the Interior shall compile a roll of those members of the Kickapoo Tribe who possess Kickapoo blood and who are also members of the Kickapoo Band of Texas. In compiling the roll, the Secretary is required to consult with the Kickapoo Tribe of Oklahoma. Immediately upon the completion of the roll, the Secretary is required to publish notice in the Federal Register stating that the roll has been completed. Once the roll is complete, the Secretary is required to maintain it and ensure that it is current.

Section 4(b) requires the Secretary of the Interior to submit a report to Congress in the event that he fails to compile the roll as mandated in subsection 4(a). In his report, the Secretary is required to explain why the roll was not completed within the one year time period established in subsection 4(a).

Section 4(c) provides that, for a period of five years after the appearance of the notice in the Federal Register required by subsection 4(a) of this Act, any member of the Band whose name appears on the Band's roll may apply for United States citizenship. The application is to be made to the Immigration and Naturalization Service (I.N.S.) and, once the application is received, the I.N.S. is to promptly grant citizenship to the applicant. In order to facilitate border passage it is expected that I.N.S. will provide the applicant with a card or other easily portable means of identification once citizenship is granted. This subsection makes clear that the submission of the application is entirely at the discretion of the applicant.

Subsection 4(c) is intended to address the inability of many members of the Band to prove that they are United States citizens. The Federal Acknowledgement Branch of the Bureau of Indian Affairs in its report on the Texas Band said "(i)t is probable that a majority of the Mexican Kickapoo are technically qualified to be United States citizens by virtue of birth in the United States or as children of a parent or parents who were born in the United States." The report continued, "however, very few have had the births recorded and it is difficult to obtain accurate data on this question."

In testimony before the House Interior and Insular Affairs Committee, the Band testified that it now registers each child born in the United States at the County Courthouse. As the citizenship of the parents is clarified, such a practice or alternative procedure for recording birth would be advisable for those children who are born to parents who are Band members and at least one of whom is a citizen of the United States.

It is not the intent of this subsection to permit the members of the Band to be citizens of the United States and Mexico at the same time. The subsection assumes that the applicant, in applying for citizenship under this subsection, is not either seeking or retaining Mexican citizenship.

After the five year period provided in this subsection has expired, members of the Band who have not applied for citizenship under its terms will be required to follow the ordinary procedures for naturalization.

The Committee points out that the procedure embodied in this subsection is not unique. For example, Article VIII of the Treaty of Guadalupe-Hidalgo, 9 Stat. 992, which concluded the Mexican War, provided a one year period during which Mexican citizens living in the areas ceded to the United States could elect to retain their citizenship or to become citizens of the United States. After the expiration of that period, those who had not made an election were deemed to be United States citizens. This article was, like this subsection in this Act, intended to meet an unusual circumstance.

The Committee notes the following differences in this subsection from subsection 4(b) as passed by the House of Representatives: First, under subsection 4(c) the period during which a member of

the Band may apply for United States citizenship does not begin until the Secretary has compiled the Band's roll. Since eligibility to apply for citizenship under this subsection is contingent on the appearance of the applicant's name on the Band's roll, the Committee concluded that it was appropriate to condition the period during which the application might be made on the completion of the roll.

The Committee also deleted the final sentence in subsection 4(b) as passed by the House. The Committee concluded that, since the period during which application for United States citizenship may be made is expressly limited to a five year period following the compilation of the roll, it necessarily followed that only those naturalization procedures ordinarily available would be available to members of the Band seeking United States citizenship after this period has run. It is the intent of the Committee that, following the expiration of the period provided in this subsection, the Band members shall become subject to the naturalization and citizenship qualifications that are ordinarily applicable.

Section 4(d) provides that, notwithstanding the Immigration and Nationality Act, the members of the Band may freely pass and repass the borders of the United States and to live and work in the United States.

The right to pass and repass the borders of the United States that is set forth in this subsection addresses the needs of the Band as an Indian community which for many years has traveled back and forth from Mexico to the United States. As noted earlier in this report, the Band holds land in Mexico and yet also regularly resides in the United States. The right of the Band to cross the international boundary has been unclear for many years now and this subsection will clarify it.

The use of the words "freely pass and repass" in this subsection are taken from the Treaty of Amity, Commerce, and Navigation (8 Stat. 116), also know as the "Jay Treaty," which was concluded by the United States and Great Britain in 1794. Article III of that treaty provides that:

> . . . It shall at all times be free to His Majesty's subjects, and to the citizens of the United States, and also to Indians dwelling on either side of the said boundary line, to *freely pass and repass* by land or inland navigation, in the respective territories and countries of the two parties on the continent of America. . . (emphasis supplied).

This portion of the Jay Treaty was reaffirmed in the Explanatory Article of May 4, 1796 (8 Stat. 130) between the United States and Great Britain. The Explanatory Article clarified the effect of the Treaty of Greenville of 1795 (7 Stat. 49) on transit across the international border. The Explanatory Article lists several Indian tribes specifically including the aboriginal Kickapoo Tribe which was still in the Great Lakes area and had not yet begun its migrations.

Until the passage of the Immigration and Nationality Act of 1924, it appears that Immigration officials recognized a right in Canadian Indians to cross the borders of the United States. After the passage of that Act, Canadian Indians who entered the United States without registering as aliens and obtaining immigrant visas were subject to

deportation proceedings instituted by the Immigration Service. A court challenge, *United States ex rel. Diablo* v. *McCandless*, 18 F.2d 282 (E.D. Pa. 1927) prompted the introduction of legislation in the 70th Congress, S. 716 and H.R. 11351, to address the issue. The latter bill was entitled, "A bill to exempt American Indians born in Canada of tribes formerly settled in the United States from the operation of the imigration act of 1924" (70 Cong. Rec. 3489). After some amendment, S. 716 was enacted into law. Shortly before, however, the *McCandless* decision was affirmed on different grounds, *McCandless* v. *United States ex rel. Diablo*, 25 F. 2d 71 (3rd Cir. 1928). As enacted into law, the provision read as follows:

> That the immigration act of 1924 shall not be construed to apply to the right of American Indians born in Canada to pass the borders of the United States: *Provided*, that this right shall not extend to persons whose membership to Indian tribes or families is created by adoption. (Act of April 2, 1928, ch. 309, 45 Stat. 401)

With the passage of the Immigration and Nationality Act in 1952, this provision was altered to read as follows:

> Nothing in this title shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race. (8 U.S.C. 1359)

The right to pass set forth in this subsection is patterned after the right recognized in the Jay Treaty and 8 U.S.C. 1359. The relationship of this right to the Immigration and Nationality Act has received judicial construction. In *Akins* v. *Saxbe*, 380 F. Supp. 1210 (D. Me 1974), it was held that the post-entry alien registration and notification requirements in the Immigration and Nationality Act do not apply to Indians falling within the ambit of 8 U.S.C. 1359. The court stated that "the intent of Congress in enacting 8 U.S.C. 1359 was . . . to exempt Canadian-born Indians from all immigration restrictions imposed on aliens by the Immigration and Nationality Act." (380 F. Supp. 1,219, emphasis in original)

The Committee notes that the Solicitor General of the United States declined to authorize an appeal of *Akins* v. *Saxbe* and that the reasoning of the *Akins* court has since been adopted by the Board of Immigration Appeals in *Matter of Yellowquill*, 16 Immigration & Naturalization Decisions 576 (1978).

The use of the phrase, "Notwithstanding the Immigration and Nationality Act . . ." as used in this subsection is intended to have the same effect. Members of the Band to whom this subsection applies are intended to be exempt from the application of the Immigration and Nationality Act or, as the *Akins* court described the holding of the district court in *McCandless*, to be ". . . free of the restrictions imposed by the immigration laws." (380 F. Supp. at 1220).

The Committee understands that the right recognized in 8 U.S.C. 1359 includes the right to live and work in the United States. Nevertheless, this subsection includes an express reference to the right of Band members to "live and work in the United States." The inclusion

of this phrase is intended to remove any doubt that the Band members are entitled to live indefinitely in the United States and to work without restriction. The specific reference to "live and work" is in no way to be construed as limiting the right in other respects.

The Committee emphasizes that the right set forth in this subsection is intended to be a political right and to acquire to members of the Band through their membership in the Band. Membership in the Band, therefore, triggers the right of passage. Blood quantum requirements are only relevant inasmuch as they are relevant to criteria established for determining membership in the Band. The Committee notes that the 1928 Act was judicially construed to have "a racial connotation." (*United States ex rel. Goodwin* v. *Karnuth*, 74 F. Supp. 660 (W.D.N.Y. 1947)) and that 8 U.S.C. 1359 contains a requirement of "at least 50 per centum of the blood of the American Indian race." Without expressing and opinion on whether the *Karnuth* court accurately described the meaning of the 1928 Act, this Committee wishes to make clear that this is not the case with this subsection.

Subsection 4(d) applies by its terms to "all members of the Band." As a practical matter, only those members of the Band who are not citizens of the United States are likely to have occasion to invoke it. Those members of the Band who are American citizens, of course, possess the rights of American citizens to enter the United States and to live, work, and so forth in the United States. The Committee notes that, in describing subsection 4(c) of H.R. 4496, the Interior and Insular Affairs Committee stated in its report that ". . . this status of the Band acknowledges that they have all the rights of citizenship except the right to vote and hold public office." This accurately describes the ambit of subsection 4(c) in this Act, however, the Committee wishes to make clear that, of course, those members of the Band who are citizens of the United States are entitled to vote and hold public office.

Subsection 4(d) of this Act also differs from H.R. 4496 as passed by the House of Representatives in that it refers to "the borders of the United States" rather than "the United States-Mexico border." This language is taken from 8 U.S.C. 1359 and is intended to avoid a limiting construction.

Subsection 4(d) differs further from H.R. 4496 in that it has eliminated the phrase ", and to be free of restrictions imposed on aliens by immigration laws." This language was removed in favor of the phrase "Notwithstanding the Immigration and Nationality Act," The Committee intends no limitation on the rights exercised by the Band members by this change in language and notes that the House phrase, which is taken from *Akins* v. *Saxbe*, is quoted in this report with approval.

The Committee notes that the court decisions on the right of American Indians to cross the international border have not squarely decided the source of that right. In *Akins* v. *Saxbe*, the court noted that the question as to the underlying source of the right of passage did not require decision under the facts of that case. Nevertheless, it stated that "(t)he Court is persuaded that . . . the intent of Congress in enacting section 1359 was to preserve the aboriginal right of American Indians to move freely through the territories originally occupied by

them . . ." (380 F. Supp. at 1219, emphasis supplied). The use of the phrase "shall be entitled" in this subsection shall not be construed as an expression of Congress the right to pass the borders of the United States has been created, rather than recognized, in this subsection.

Section 5. Land acquisition; applicability of the Indian Reorganization Act

Section 5(a) provides that the Indian Reorganization Act (48 Stat. 984) is applicable to the Band. Subsection 5(a) contains a proviso which limits the authority of the Secretary to acquire lands pursuant to the Indian Reorganization Act to lands located within Maverick County, Texas. Except for this limitation, the Indian Reorganization Act, in its entirety, applies to the Band. The Committee notes that subsection 5(a) differs from subsection 5(a) in H.R. 4496 as passed by the House in that it does not contain either a specific authorization that the Secretary may take land for the Band pursuant to section 5 of the Indian Reorganization Act or a specific authorization that the Band may organize pursuant to section 16 of that Act. These authorizations were removed because the Committee concluded that, by making the Indian Reorganization Act applicable to the Band, the Act in its entirety is applicable to the Band unless otherwise provided in this Act. Therefore, the Band is authorized to organize pursuant to the Indian Reorganization Act if it so elects. This point is important because, although it does not appear that the Band will seek to organize in the near future, it may at some later time decide to establish a formal tribal government. At that time, subject to the approval of a constitution by the Department of the Interior, the Band will determine whether they wish to become wholly independent of the Oklahoma Tribe, to organize as a subgroup of the Tribe, or to establish some other form of organization. The application of section 16 of the Indian Reorganization Act to the Band provides it with the flexibility to make these decisions.

The application of the Indian Reorganization Act in its entirety to the Band also means that the Secretary is authorized to act pursuant to section 5 of that act subject to the proviso in subsection 5(a) of this Act. The Committee notes that the Interior Department testified that it already has the authority to act pursuant to section 5 of the Indian Reorganization Act with respect to the Band by virtue of the membership of many members of the Band in the Oklahoma Tribe. This Act makes that authority specifically applicable to the Band itself and limits it to Maverick County, Texas.

Section 5(b) authorizes the Secretary of the Interior to accept no more than 100 acres of land in Maverick County, Texas which is offered for the benefit of the Band. According to testimony available to the Committee, private fund-raising activity on behalf of the Band is in progress. The fund-raisers believe that their efforts will raise sufficient monies to purchase the amount of land authorized for acquisition under this subsection.

The Oklahoma Tribe must approve the acquisition of any land taken into trust by the Secretary pursuant to this subsection. The Committee notes that the Tribe has adopted a resolution creating the "Kickapoo Trust Land Acquisition Committee." This committee, composed of members of the Tribe, members of the Band, and others, has

been authorized to oversee all fund raising activity for land acquisition for the Band and has full and sole authority to make the final and binding decisions regarding the specific land acquired and the purchase of it.

Because the Tribe has formally delegated this responsibility to the Kickapoo Land Acquisition Committee, this Committee expects the Secretary or his designee to negotiate with the Land Acquisition Committee in determining which acreage will be taken into trust for the Band.

This subsection does not limit the authority of the Secretary under the Indian Reorganization Act.

Section 6. Jurisdiction

Section 6 provides that the State of Texas shall have jurisdiction over all civil causes of action and criminal offenses arising in the Band's trust lands in accordance with Public Law 83–280 (28 U.S.C. 1360 and 18 U.S.C. 1162). This provision further makes applicable the provisions of the Act of April 11, 1968. Therefore, the State is authorized to arrange for retrocession of jurisdiction back to the United States and the Band at some point in the future at his election.

Section 7. Provision of Federal services

Section 7(a) provides that the Band and its members in Maverick County, Texas shall be eligible for federal Indian services even though the land that the United States will take in trust for the Band is not designated a "reservation" under this Act. The Committee notes that in the Congressional findings set forth in subsection 2(a) of this Act, Congress finds that members of the Band have especial educational needs because of their tricultural background. The regulations governing the administration of the Johnson-O'Malley Act, provide the Secretary with the discretion to authorize a higher level of funding where special needs are present. (25 C.F.R. 273.31(b)). This finding of Congress makes clear that the Band is an appropriate group for such additional funding.

The Committee notes that the Attorney General of the State of Texas has concluded that the State of Texas cannot provide services to the Band because the Band is not federally recognized. The federal recognition extended to the Band in this Act removes any obstacle to the provision of such services by the State of Texas.

Section 7(b) provides that the Secretary of the Interior and the head of each department and agency must consult and cooperate with appropriate officials or agencies of the Mexican Government in providing services to the Band and its members. This Act finds that the Band has a unique culture that is derived from the aboriginal Kickapoo Tribe, Mexico, and the United States. The provision of services to the Band should take account of this unique culture and should accommodate it. The consultations required under this subsection are intended to ensure that the United States and Mexico, in the provision of services to the Band, meet the special cultural needs of the Band.

Subsection 7(b) also authorizes the United States and Mexico to enter into joint funding agreements, whenever practicable, in providing services to the Band.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office submitted the following cost estimate on H.R. 4496, as amended.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., December 15, 1982.

Hon. WILLIAM S. COHEN,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 4496, the Texas Band of Kickapoo Act, as amended and ordered reported by the Senate Select Committee on Indian Affairs, December 15, 1982.

This bill would grant federal recognition to a band of Indians identified by the bill. Although the bill does not specifically authorize the appropriation of funds, it would make all members of the Texas Band of Kickapoo Indians eligible for all services and benefits available to federally recognized Indian tribes. Thus, while no additional expenditures are mandated by this bill, relevant federal agencies would be required to include members of the Band among those eligible for benefits and may seek additional funds in order to provide such benefits. The bill would make all duly enrolled members of the Texas Band of Kickapoo Indians eligible for these benefits.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES BLUM
(For Alice M. Rivlin, Director).

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that H.R. 4496 will have no regulatory impact and only minimal paperwork impact.

EXECUTIVE COMMUNICATION

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., December 15, 1982.

Hon. WILLIAM S. COHEN,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The following are the views of the Department of the Interior on H.R. 4496 in the Senate, the "Texas Band of Kickapoo Act."

We recommend enactment of H.R. 4496.

Historical background

The Texas Band of Kickapoo, commonly referred to as the Traditional or Mexican Kickapoo, are culturally and linguistically part of the eastern Algonquian Indians, and were first encountered by Europeans in the Great Lakes region in 1640. Their history is long and complex, but important to an understanding of the current legislation. The Kickapoo did not migrate to Mexico until the middle of the 1800's, by which time there were a number of Kickapoo bands. After 1817, about half of the Kickapoo were part of an intertribal settlement in Texas; however, when Texas became independent in 1838, the bands left Texas because of State policy concerning Indians. Most went north to Oklahoma, but one band of about 80 Kickapoos left Texas in 1839 and crossd the Rio Grande into Mexico, settling at Morelos, about 40 miles south of Eagle Pass, Texas.

In 1850, a substantial body of Kickapoos was persuaded by Seminole Chief Wildcat to move to Mexico. However, in late 1851 or early 1852, two chiefs of the Oklahoma bands travelled to Mexico and convinced the Kickapoos there to return to their bands in Oklahoma. Only about 20 Kickapoos remained in Mexico at that point.

In 1862, a third movement of Kickapoos to Mexico began, stimulated by discontent with conditions in Oklahoma and Kansas, and encouraged by the Mexican Government's desire to have protection against Indian raiders from the north. About 1,300 altogether migrated during this period, leaving only a few hundred Kansas Kickapoos in the United States. However, part of the group soon returned to Kansas, disliking the conditions in Mexico.

Between 1871 and 1873, the U.S. Government attempted to convince the Mexican Kickapoo to return to the United States in order to stop raiding against Texas settlements. In 1873, while negotiations were going on with the Bureau of Indian Affairs, a U.S. military party raided the Kickapoo's village at Nacimiento while the warriors were gone and carried off many of the women and children to Oklahoma. Later that year, 300 more Kickapoos were convinced to follow the captives to Oklahoma. In 1875, two more groups went north, leaving about only 350 Kickapoos in Mexico.

Finally, in 1893, despite the fierce objections of the Kickapoo, an allotment agreement was ratified by the Secretary of the Interior, allotting the Oklahoma reservation that had been established for them in 1883. Only 285 allotments were made despite the fact that 325 Kickapoos were listed by the BLA as being entitled to allotments. Later attempts to provide allotments for the remaining 40 Kickapoos were resisted by the government and in 1898 that group migrated to Mexico.

Meanwhile, approximately two-thirds of the tribe refused to move onto their allotments. This group became known as the "Kicking Kickapoos." A combination of dissatisfaction with the allotments, increased pressure to put their children in school and exploitation of their land rights by non-Indians led to the emigration of all of the Kicking Kickapoos to Mexico.

It is descendants from these groups, therefore, that make up the present day Traditional Kickapoo. The band has been relatively

undisturbed since that time by both the Mexican and United States Governments. Beginning in the 1940's, drought and reduced hunting resources led the group to begin an annual migration to the United States as migrant farm workers.

Present status of the traditional Kickapoo

Approximately 80 percent of the Traditional Kickapoo are currently enrolled with the Oklahoma Kickapoo Tribe. The Traditional Kickapoo are generally more conservative and are important to the Oklahoma group as the center of the continuing Kickapoo culture. In Mexico, the group (consisting of approximately 600–700 persons) has been organized since the 1930's as an "ejido," or communal landholding organization defined under Mexican agrarian law. The group continues to hold approximately 17,000 acres in Mexico.

Because the Traditional Kickapoo are a part of the Oklahoma Kickapoo Tribe, they are eligible for BIA and IHS services when they are in the Oklahoma Kickapoo service area. Although the Traditional Kickapoo spend much of the year in Eagle Pass, Texas, they are not entitled to services there, as they are considered to be away from their service area. The Texas legislature, at one point, passed legislation that would provide State services to them as an Indian tribe. Services were provided to the Band from 1977 until 1979 when a Texas Attorney General's opinion stated that Texas could not provide such services without specific Federal recognition of their status as an Indian tribe or band.

Provisions of H.R. 4496

The first section provides the short title for the bill. Sections 2 and 3 of H.R. 4496 contain the Congressional findings and definitions for the bill. Section 4(a) would direct the Secretary to compile and maintain a roll of the enrolled members of Kickapoo blood of the Oklahoma Kickapoo Tribe who comprise the membership of the Texas Band. Section 4(b) would provide a five-year option period in which those Band members who are not U.S. citizens or who cannot establish their citizenship may apply for and be granted U.S. citizenship. Thereafter, non-citizen members of the Band may acquire U.S. citizenship only as otherwise provided by law. Section 4(c) would allow Band members to pass and repass the United States-Mexico border, work and live in the United States and be free of restrictions imposed on aliens by the immigration laws.

Section 5 of the bill would direct the Secretary to accept into trust for the Texas Band, with the approval of the Tribe, not more than 100 acres of land in Maverick County, Texas. Thereafter, the Secretary is authorized to accept additional lands in Maverick County pursuant to provisions of existing law. The Indian Reorganization Act is made applicable to the Band and the Band is authorized to organize pursuant to section 16 of this Act if it so elects. Section 5(b) would give civil and criminal jurisdiction over the Band's trust lands to the State of Texas.

Section 6 would designate Maverick County, Texas, as a service area for Federal Indian services to the Kickapoo. It also provides that, in the delivery of such services, the Secretary and Head of each Department and Agency administering Indian programs shall consult and

cooperate with appropriate Mexican officials, so that the services meet the special tricultural needs of the Band and its members.

Recommendations and comments

We support the provision in section 4 of the bill which would clarify the status of the members of the Texas Band. Such status would provide crossing privileges, as well as clarify their status while in the United States. Those Band members who are not U.S. citizens or who cannot establish their citizenship would have all the rights of U.S. citizenship except the right to vote and hold office. Their current "parole" status granted by the Immigration and Naturalization Services has led to confusion and was intended by the INS to be merely temporary, pending a determination by the Congress as to their status. Further, the proposed status will not alter their land and other rights in Mexico, whereas the granting of U.S. citizenship would terminate their "ejido" land rights in Mexico. To confirm this, we recommend that the Committee obtain the views of the INS and the Department of State.

We have authority under the provisions codified in 25 U.S.C. 465 to take land into trust for the Kickapoo Tribe of Oklahoma, to provide homesites near Eagle Pass, Texas. However, since the legislation would grant Federal recognition to the Band, we have no objection to taking lands into trust for the benefit of the Band as provided in section 5(a). In addition, we understand that funds are being raised for such an acquisition and that no Federal funds will be needed for the acquisition.

We support the provision in section 5(b) of the bill which would extend Texas state civil and criminal jurisdiction over the lands to be acquired for the Kickapoo.

We also support the provision in section 6 of the bill which authorizes Federal India . services to be provided to the Kickapoo in Maverick County, Texas, "without regard to the existence of a reservation." This provision will provide a clear basis for the provision of services through the Bureau of Indian Affairs and the Indian Health Service.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

THEODORE C. KRENZKE,
Acting Deputy Assistant Secretary.

LEGISLATIVE HISTORY

H.R. 4496 was introduced in the House of Representatives on September 16, 1981 by Mr. Kazen of Texas. The bill was referred to the House Committee on Interior and Insular Affairs and hearings were held on October 30, 1981 and August 5, 1982. The measure was reported out of the Committee on September 15, 1982 with amendments and was passed by the House by Unanimous Consent on September 29, 1982.

The Senate received H.R. 4496 on September 29, 1982 and referred the bill to the Select Committee on Indian Affairs.

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